

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RODELL BROWN,

Defendant-Appellant.

UNPUBLISHED
December 17, 2013

No. 307163
Wayne Circuit Court
LC No. 10-010344-FH

Before: K. F. KELLY, P.J., and MURRAY and RIORDAN, JJ.

PER CURIAM.

Defendant appeals as of right his jury convictions of four counts of larceny in a building, MCL 750.360. Defendant was sentenced to 18 months' probation. We affirm.

I. FACTUAL BACKGROUND

Defendant was employed as an intake corrections officer at the Ryan Correctional Facility. During November 2011, he was responsible for processing parole detainees as they arrived at the facility, which involved strip searching them, removing and securing their property, and escorting them to their cells. One such detainee claimed that when he arrived at the facility, he gave defendant \$399 in cash and completed a receipt reflecting the amount of money and property that was taken. However, when the inmate was transferred to a different facility, he received his property but not his cash. A second inmate arrived at the same facility and submitted his property and approximately \$448 in cash to defendant. This inmate also completed a receipt reflecting the amount of money and property confiscated. When he was transferred to a different facility, he likewise received his property but not his money.

A third inmate similarly arrived at the facility and submitted to defendant \$131 in cash and a check for \$420. While defendant gave him a receipt for the property, it did not indicate how much cash was taken. The inmate testified that the total amount of money was reflected on a receipt stapled to the envelope containing the money. When he was transferred to a different location, he received his property but not his cash or check. The fourth inmate also arrived at the facility and handed over to defendant approximately \$63 in cash. Defendant placed the money into the inmate's eyeglass case and put the case in a bag with his clothes. While the inmate signed a receipt, he did not look to see if defendant had recorded how much money was confiscated.

The business office staff maintained that they had not received any cash from the four inmates. Defendant had not signed the receipts in this case, although he had signed receipts before. When defendant's supervisor asked him why he did not sign the receipts in this case, defendant replied that he was a little paranoid about it. At trial, defendant testified that he did not sign the receipts because the signature line stated "receiving clerk" and he was a "correction officer." Defendant also testified that when he received money from the first two inmates, he placed it in the safe.

The jury found defendant guilty of four counts of larceny in a building, MCL 750.360. Defendant now appeals.

II. SUFFICIENCY OF THE EVIDENCE

A. STANDARD OF REVIEW

Defendant first argues that there was insufficient evidence to support his conviction. This Court reviews de novo a challenge on appeal to the sufficiency of the evidence. *People v Ericksen*, 288 Mich App 192, 195; 793 NW2d 120 (2010). "In determining whether the prosecutor has presented sufficient evidence to sustain a conviction, an appellate court is required to take the evidence in the light most favorable to the prosecutor" to ascertain "whether a rational trier of fact could find the defendant guilty beyond a reasonable doubt." *People v Tennyson*, 487 Mich 730, 735; 790 NW2d 354 (2010) (quotation marks and citations omitted). "All conflicts in the evidence must be resolved in favor of the prosecution and we will not interfere with the jury's determinations regarding the weight of the evidence and the credibility of the witnesses." *People v Unger*, 278 Mich App 210, 222; 749 NW2d 272 (2008).

B. ANALYSIS

The elements of larceny in a building are:

(1) an actual or constructive taking of goods or property; (2) a carrying away or asportation; (3) the carrying away must be with a felonious intent; (4) the goods or property must be the personal property of another; (5) the taking must be without the consent and against the will of the owner; and (6) the taking must occur within the confines of the building. [*People v Sykes*, 229 Mich App 254, 278; 582 NW2d 197 (1998).]

On appeal, defendant contends that because the victims voluntarily surrendered possession of their funds during the intake procedure, he could not be guilty of larceny because he did not take money without consent or against the victims' will. He suggests that his behavior may have been embezzlement, MCL 750.174, or extortion, MCL 750.213, but not larceny of a building.

However, defendant's argument overlooks that the victims' consent was for the limited purpose of securing the money while they were in the facility. This Court has explained that "if the owner of the goods intends to keep title but part with possession, the crime is larceny." *People v Malach*, 202 Mich App 266, 271; 507 NW2d 834 (1993); see also *People v Jones*, 106 Mich App 429, 433-434; 308 NW2d 243 (1981). In the instant case, the victims relinquished

custody of their money to defendant for a limited and temporary purpose. They did not consent to defendant taking their money for his own purposes, and whether defendant's conduct may have violated other statutes is immaterial. There was sufficient evidence that defendant took possession of the victims' money without their consent to keep it.

With respect to the two victims who signed receipts indicating that no money had been collected, defendant asserts that knowingly signing inaccurate receipts amounts to "sheer stupidity for which there can be no remedy at law." He further contends that a signed receipt "stands as prima facie evidence of what it purports and must be rebutted by evidence of extortion to support criminal charges." Defendant fails to support these conclusory statements with any citation to authority. Merely stating a position without supporting citations to relevant authority does not present an issue for this Court's review. *People v Harlan*, 258 Mich App 137, 140; 669 NW2d 872 (2003). Furthermore, the receipts were evidence the jury could consider in evaluating the credibility of defendant and the victims, and "it is the role of the jury, not this Court, to determine the weight of the evidence or the credibility of witnesses." *People v Eisen*, 296 Mich App 326, 331; 820 NW2d 229 (2012) (quotation marks and citation omitted). The mere fact that the receipts did not list a money amount does not provide a basis for interfering with the jury's verdict.

III. ADDITIONAL ERRORS

A. STANDARD OF REVIEW

Defendant next identifies several alleged errors that require reversal. Because he did not raise these issues below, we review for plain error affecting substantial rights. *People v Carines*, 460 Mich 750, 764-767; 597 NW2d 130 (1999).

B. ANALYSIS

Defendant first contends that criminal charges should not have been brought in this case because the "proper course of this case" was a civil action against the Department of Corrections. However, the Michigan Supreme Court has "repeatedly recognized that the decision whether to bring a charge and what charge to bring lies in the discretion of the prosecutor." *People v Venticinque*, 459 Mich 90, 100; 586 NW2d 732 (1998). Here, the prosecutor properly determined that defendant's conduct was proscribed by the offense of larceny in a building. The availability of a civil remedy for the victims does not encroach on the prosecutor's authority to pursue a criminal prosecution.

Defendant next asserts that the charges may have been brought because of racially motivated behavior of the deputy warden, who was spurned by defendant's girlfriend.¹ Not only

¹ While defendant claims this is newly discovered evidence, he fails to support that claim with any analysis or legal authority that would justify reversal. See *People v Grissom*, 492 Mich 296, 313; 821 NW2d 50 (2012).

does the record lack support for this allegation, sufficient evidence supported defendant's convictions. Thus, defendant's unsupported accusation provides no basis for relief on appeal.

Defendant also argues that joinder of the charges was improper and prejudicial. Pursuant to MCR 6.120(C), defendant was permitted to file a motion to sever for separate trials for unrelated offenses. Yet, defendant did not file a motion to sever before trial and has provided no support for the proposition that the trial court should have *sua sponte* ordered the trial severed. See *People v Payne*, 285 Mich App 181, 195; 774 NW2d 714 (2009) (quotation marks and citation omitted) ("An appellant may not . . . give only cursory treatment with little or no citation of supporting authority.").²

Moreover, even if defendant had raised this issue below, joinder was appropriate. "Related" is defined in MCR 6.120(B)(1) as: "(a) the same conduct or transaction, or (b) a series of connected acts, or (c) a series of acts constituting parts of a single scheme or plan." The charged offenses involved a series of connected acts or series of acts that constituted parts of a single scheme or plan, and thus were "related" under MCR 6.120(B)(1). Therefore, joinder of these charges was proper.

Defendant also refers to the bindover, noting that the district court expressed skepticism about the prosecution's ability to obtain a conviction, although it bound defendant over for trial. To the extent that defendant is arguing that the bindover decision was erroneous, any error does not warrant reversal. Where sufficient evidence is presented at trial, any error in the bindover is harmless. *People v Bennett*, 290 Mich App 465, 481; 802 NW2d 627 (2010). Because defendant has not demonstrated that the evidence at trial was insufficient to support his convictions, any error in the bindover is not a basis for appellate relief.

Defendant also claims that defense counsel's failure to object to leading questions constituted ineffective assistance of counsel. Even if we were to review this unpreserved and conclusory claim, there is no basis to conclude that the failure to object to these innocuous questions fell below an objective standard of reasonableness or that a different result would have been reasonably probable had his counsel objected. *People v Armstrong*, 490 Mich 281, 289-290; 806 NW2d 676 (2011).

Finally, in the requested relief section of his brief, defendant asserts "that the inferences in this case sufficiently shocks the conscience of this court to warrant investigation into the competence and/or conduct of it's [sic] participants, particularly the assistant warden of the prison facility who was overall responsible for this action and the use of the totality of the circumstances doctrine in establishing probable cause as it requires undertaking a presumption of guilt." While this Court has broad authority to fashion any relief as the case may require, MCR

² Defendant also fails to address how MRE 404b is relevant for joinder, or cite any case law in support. *Payne*, 285 Mich App at 195.

7.216(A)(7), we decline defendant's invitation to direct an investigation based on his jumbled and unsubstantiated claims.³

IV. CONCLUSION

Because sufficient evidence was presented to support defendant's convictions, reversal is not warranted. Furthermore, defendant has alleged no other errors to justify reversal or remand. We affirm.

/s/ Kirsten Frank Kelly
/s/ Christopher M. Murray
/s/ Michael J. Riordan

³ Throughout his brief, defendant also makes various statements that are tantamount to challenging the credibility of the prosecution's evidence. However, issues of weight and credibility fall within the jury's purview. *Eisen*, 296 Mich App at 331.